



October 23, 2007

Chairman Kevin J. Martin  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**RE: Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments, MB Dkt No. 07-51**

Dear Chairman Martin:

I write on behalf of Consumers Union<sup>1</sup> to urge the Commission to take swift action to ensure that the millions of Americans living in multiple dwelling unit properties (“MDUs”) and other real estate developments share in the benefits from video competition. In particular, the Commission should prohibit video providers from entering into new exclusive access agreements, or enforcing existing exclusive arrangements. These agreements threaten consumer choice and deter the spread of long-sought video competition.

According to the Commission’s most recent report on cable prices, consumers have long suffered under monopolistic cable pricing, experiencing a 93 percent increase in cable rates since Congress’ enactment of the Telecommunications Act of 1996.<sup>2</sup> Moreover, by the Commission’s own measure, satellite competition “does not appear to constrain cable prices.”<sup>3</sup> In addition to skyrocketing rates, consumers have had limited choice of providers or channel offerings.

---

<sup>1</sup> Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union's income is solely derived from the sale of *Consumer Reports*, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* (with approximately 4.5 million paid circulation) regularly carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

<sup>2</sup> Report on Cable Industry Pricing, MM Docket No. 92-266, at 1 (Dec. 27, 2006).

<sup>3</sup> *Id.*

Competition saves consumers money. The Commission has documented that prices are 17 percent lower where wireline cable competition is present.<sup>4</sup> Although the number of communities experiencing that type of competition has historically been exceedingly small, some providers – including notably the telephone companies – are now rolling out their own video services in competition with the cable incumbents.

The Commission must ensure, however, that residents of MDUs do not miss out on these cost savings and improved product offerings resulting from competition. These exclusive arrangements, which appear to be commonplace, work in much the same way – and have largely the same effect – as exclusive franchises of an earlier era, creating competition-free zones where consumers have nowhere to turn for cable service but to the incumbent approved by the property owner. Through no fault of their own, residents of MDUs and other real estate developments subject to such agreements have no ability – short of moving – to choose an alternative video service provider, otherwise available to the rest of the community.

Adding to the urgency for action is the disproportionate impact exclusive access agreements may have on communities of color. As the Minority Media & Telecommunications Council recently reminded the Commission:<sup>5</sup>

As it happens, people of color are far more likely than others to reside in MDU housing. While 27.7% of all households are located in MDUs with 50 or more residents, 40.0% of all households headed by people of color (including Hispanics racially identifying as White) live in 50+ dwelling MDUs. See American Housing Survey for the United States (2005), Table 2-25, p. 106.

The Commission must ensure that no segment of the population is denied the benefits of video competition. Therefore, at least until competition takes hold, the Commission should prohibit video providers from entering or enforcing exclusive access agreements.

To emphasize, as the Commission crafts rules to address exclusive access agreements, Consumers Union urges the Commission to ensure that its rules extend to existing, and not just newly-negotiated, agreements. If it does not do so, the impact of these anticompetitive agreements will be long lasting, extending the “bad old days” of cable monopoly pricing and practices well into the future for many consumers. The record in this proceeding documents that many exclusive access agreements have terms of 10 years or more, and some are even perpetual. In order for Commission rules to effectively and fully address the problem created by

---

<sup>4</sup> *Id.*

<sup>5</sup> Letter from David Honig to Marlene Dortch, MB Docket No. 07-51 (Oct. 11, 2007).

exclusive access agreements, these rules must extend to agreements that are currently in effect, and the Commission should allow a short transition period for owners to renegotiate existing exclusive arrangements.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Murray". The signature is fluid and cursive, with a long, sweeping tail on the "y".

Chris Murray  
Senior Counsel  
Consumers Union